

May 20, 2011

**VIA ELECTRONIC DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re:   *Ex Parte* Notification – WT Dkt. Nos. 11-65, 11-18, DA 11-252,  
      ULS File No. 0004566825**

Dear Ms. Dortch:

AT&T Inc. (on behalf of its wholly-owned subsidiary AT&T Mobility Spectrum LLC) (“AT&T”) and QUALCOMM Incorporated (“Qualcomm”) (collectively, the “Applicants”) are filing this letter solely to respond to Commission precedent cited for the first time in the Joint Reply to the Oppositions to the Joint Motion to Consolidate (the “Joint Reply”), filed by Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation (the “Joint Parties”).<sup>1</sup> The precedent the Joint Parties cite in the Joint Reply has no relevance to these proceedings and is distinguishable.

The Commission has repeatedly refused to consolidate transfer and assignment proceedings under circumstances such as here where the parties in the proceedings are not identical, the licenses involved in each proceeding are different, the transactions are neither interrelated nor dependent on one another, and the transactions raise business and public interest benefit issues that are unique to each proceeding.<sup>2</sup> The Joint Parties claim that three orders support their argument that consolidation of the AT&T/Qualcomm and AT&T/T-Mobile proceedings nevertheless is appropriate here.

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<sup>1</sup> See Joint Reply to Oppositions by Cincinnati Bell Wireless, LLC, *et. al.*, WT Dkt Nos. 11-18, 11-65 (filed May 17, 2011).

<sup>2</sup> See Joint Opposition of AT&T Mobility Spectrum LLC and Qualcomm Incorporated to Joint Motion to Consolidate, WT Dkt Nos. 11-18, 11-65, at 8-12 (filed May 4, 2011) (the “Joint Opposition”).

The three new orders cited by the Joint Parties, plus *Shareholders of Tribune Co.* previously cited by the Joint Parties,<sup>3</sup> actually undermine their own argument. The orders each involved circumstances clearly distinguishable from the present proceedings, *i.e.*, the orders involved proceedings where the licenses, applicants or issues were the same, which is not the case here. Specifically, the three new orders are distinguishable for the following reasons.

First, the Joint Parties are simply wrong when they claim that *Solar Broadcasting*<sup>4</sup> supports consolidation of the AT&T/Qualcomm and AT&T/T-Mobile proceedings.<sup>5</sup> In *Solar Broadcasting*, the Commission consolidated only two proceedings, but not the two proceedings implied by the Joint Parties' argument. In one proceeding, Cumulus was seeking Commission permission to sell six radio stations to Clear Channel. The Commission consolidated this proceeding with a proceeding in which Cumulus was seeking Commission permission to dismiss previously filed applications to buy two radio stations from Solar. Cumulus had assigned its right to buy the two stations to Clear Channel, and, thus, the Commission dismissed the applications since Cumulus no longer needed Commission permission that it had originally sought to acquire them for itself. But contrary to what the Joint Parties suggest, the Commission did *not* consolidate into the proceeding the application to transfer the two Solar licenses from Solar to Clear Channel. The Commission made clear that its consideration of Clear Channel's acquisition of those two stations was the subject of a separate proceeding and would be addressed in a separate order.<sup>6</sup> Thus, *Solar Broadcasting* cannot support consolidation here because the Commission did not consolidate two license-acquisition proceedings. Indeed, that order actually supports a denial of the Joint Motion.<sup>7</sup>

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<sup>3</sup> The Joint Parties also continue to rely on *Shareholders of Tribune Co. and Sam Zell*, Memorandum Opinion and Order, 22 FCC Rcd. 21266 (2007). The Applicants already have noted that order is inapplicable because the separate proceedings involved the transfer and renewal of licenses common to both proceedings, so the Applicants will not address that order again here. See Joint Opposition at 11-12.

<sup>4</sup> *Solar Broadcasting Co. and Cumulus Licensing Corp.; Cumulus Licensing Corp. and Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd. 5467 (2002) ("*Solar Broadcasting*").

<sup>5</sup> Joint Reply at 3.

<sup>6</sup> *Solar Broadcasting* at 5494 n.10.

<sup>7</sup> If anything, *Solar Broadcasting* supports Applicants' point that the Commission need not consolidate the AT&T/T-Mobile proceeding with the AT&T/Qualcomm proceeding to consider the competitive effects of the AT&T/Qualcomm transaction on the AT&T/T-Mobile transaction. Joint Opposition at 6. In *Solar Broadcasting*, the Commission considered issues arising out of an opponent's claim that Cumulus had assigned

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Second, *British Telecommunications/AT&T Corp.*,<sup>8</sup> which involved the breakup of a joint venture, is equally inapplicable. In that case, the Commission consolidated five applications that dealt exclusively with the division of the joint venture's assets between British Telecommunications and AT&T. Specifically, AT&T and BT sought authority to (a) transfer control of two subsidiary licensees – CGN USA and Violet License Co. – from the joint control of AT&T and BT to AT&T; (b) transfer or assign interests in cable landing licenses held by CGN USA to a trustee and subsequently, in part, back to CGN USA and, in remaining part, to a BT subsidiary; and (c) modify the Section 214 authority governing the ownership and operation of submarine cable systems in which CGN USA had ownership interest to recognize the transfer of those interests, in part, back to CGN USA and, in remaining part, to the BT subsidiary. Thus, all five applications involved the same two parties – AT&T and BT (or affiliates of each) – that sought to transfer control of licenses and authorizations that they jointly controlled to one party or the other. This bears no resemblance to the current proceedings, which involve two unaffiliated transferors that seek to transfer licenses in which only one or the other has an interest to an unaffiliated third party.

Finally, *Forty-one Late-filed Applications*<sup>9</sup> also is inapplicable to the present proceedings. In that case, the Commission consolidated proceedings involving 41 EBS licensees who had submitted late-filed renewal applications, and “indicated that they had relied on their lessees to timely file their renewal applications and that their lessees failed to do so.” Unlike the present proceedings, concerning two separate transactions each of which raises issues unique to that proceeding, the sole narrow issue raised by all 41 applications was a common one – *i.e.*, for applications otherwise meeting renewal requirements, did the licensees' reliance on lessees to file their renewal applications justify a waiver of the renewal application deadline? The Commission answered no, but nevertheless granted a waiver because strict application of the FCC's rule would hinder the substantial efforts to transition the 2500-2690 MHz band and would result in spectrum lying fallow until reauction.<sup>10</sup>

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unauthorized control of the Solar stations to Clear Channel *despite* the fact that the Clear Channel/Solar proceeding was not consolidated with the other two proceedings.

<sup>8</sup> *British Telecommunications PLC, BT Group PLC, AT&T Corp., Violet License Co., LLC; Authority to Transfer Control of Concert Global Networks USA LLC*, Memorandum Opinion and Order, 17 FCC Rcd 3643 (2002).

<sup>9</sup> *Forty-one Late-Filed Applications for Renewal of Educational Broadband Service Stations*, Memorandum Opinion and Order, 22 FCC Rcd. 879 (2007).

<sup>10</sup> *Id.* at 882-83.

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In sum, the orders the Joint Petitioners rely on are readily distinguishable from the instant proceedings, in which distinct transferors are transferring distinct assets, the business terms and public interest benefits of the transactions are different, the transactions are not interrelated or dependent on one another, and each proceeding raises issues that are unique to that proceeding.

Sincerely,

QUALCOMM Incorporated

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May 20, 2011

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2011, I caused true and correct copies of the foregoing *ex parte* letter of AT&T and Qualcomm to the Joint Reply to Joint Opposition to Motion to Consolidate Filed by Cincinnati Bell Wireless, LLC, et. al.: to be served by first-class mail, postage prepaid, upon the following parties in the above-captioned proceedings, and by electronic mail on the following FCC employees and Best Copy and Printing, Inc:

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